

REMARKS

Claims 1 through 38 were presented for examination in the present application. The instant amendment amends claims 1, 6, 7, and 31. Accordingly, claims 1 through 38 remain pending in the present application upon entry of the instant amendment, which is respectfully requested.

The specification has been amended in the manner suggested by the Examiner. Specifically, the paragraph beginning at page 28, line 4 has been amended to correct obvious errors, namely to change "3b" to "2b" and "12b" to "10b". Reconsideration and withdrawal of the objection to the specification is respectfully requested.

It is respectfully submitted that the amendment filed on April 17, 2003 included a Letter to Draftsman having an amended Figure 7 removing reference numeral 54. Applicants respectfully request review and approval of the previously amended Figure 7. Formal drawings will be submitted upon approval of the amendment proposed therewith.

The outstanding Office Action rejected claims 1, 6, 7, and 31 under 35 U.S.C. §112, second paragraph.

Claims 6 and 7 have been amended to remove the objected "type" element. It is believed that these amendments obviate the rejection to claims 6 and 7 and merely make explicit what had been implicit in these claims. Reconsideration and withdrawal of the rejection to claims 6 and 7 is respectfully requested.

Claims 1 and 31 have been amended to clarify that the light diode has a wavelength-dependent spectral intensity that is in the wavelength range between 480 and 620 nm and is greater than one-hundredth of the maximum spectral intensity such that the light diode emits considerable intensity through essentially the entire visible spectral range. Support for these amendments can be found in the specification at least at page 6, line 26 through page 7, line 8. It is believed that this clarification obviates the rejection to claims 1 and 31. Accordingly, reconsideration and withdrawal of the rejection to claims 1 and 31 is also respectfully requested.

Claims 1 through 5, 8, 11 through 17, 22, 28, 31, 35, and 37 were finally rejected by the outstanding Office Action under 35 U.S.C. §103(a) over U.S. Patent No. 5,880,826 to Jung et al. (Jung) in view of U.S. Patent No. 5,867,276 to McNeil (McNeil) in further view of U.S. Patent No. 4,578,959 to Alsenz (Alsenz).

Claims 6, 7, 9, 10, 18 through 21, 23 through 27, 29, 30, 32, 33, and 36 were finally rejected under 35 U.S.C. §103(a) over Jung, McNeil, and Alsenz in further view of U.S. Patent No. 4,150,898 to Suga (Suga), U.S. Patent No. 6,407,830 to Keithley (Keithley), U.S. Patent No. 6,262,845 to Sweatt (Sweatt), U.S. Patent No. 5,795,798 to Mishra et al. (Mishra), U.S. Patent No. 4,602,281 to Nagasaki (Nagasaki), U.S. Patent No. 5,392,125 to Reisser (Reisser), U.S. Patent No. 5,923,434 to Lex (Lex '434), U.S. Patent No. 4,918,321 to Klenk et al. (Klenk), and U.S. Patent No. 5,596,412 to Lex (Lex '412).

The Office Action acknowledges that Jung uses a halogen light source and not the light diode required by claims 1 and 31. However, the Office Action asserts that McNeil provides

diodes and incandescent sources as functional equivalents. See Page 5, first paragraph of the Office Action dated July 8, 2003.

Claims 1 and 31 have been amended to require, in part, that the light diode emits considerable intensity through essentially the entire visible spectral range.

Jung is directed to a measurement system for the optical characteristics of teeth. Here, an optical fiber is moved across the teeth to illuminate the measurement surfaces. The light reflected from the teeth is received by an optical fiber, which passes the light on to a receiver for evaluation.

McNeil is directed to an optical scatterometer system that enables analysis of a sample material (e.g., microelectronic and optoelectronic semiconductor materials) without rotating or moving the sample and/or detector. With respect to the illumination of the sample, McNeil provides:

"Representative light sources include commonly available incandescent (e.g., tungsten filament), high pressure Xe, and halogen lamps. This type of source is to be contrasted with lasers and low pressure discharge lamps which have output at one or more wavelengths that extend over a relatively narrow wavelength range. Alternatively, the source (105) might comprise multiple wavelengths from one or more lasers or light emitting diodes which, collectively, provide a source (105) that has a broad spectral composition." See Col. 5, lines 22-31.

Thus, it is submitted that McNeil provides the light emitting diodes in context with lasers, which represent, as generally known by a person skilled in the art, monochromatic light sources, and together with those are explicitly put in contrast to light sources as for example halogen light sources. For this reason, it is submitted that the light sources provided

by McNeil are merely monochromatic light emitting diodes and not the light diode that emits considerable intensity through essentially the entire visible spectral range of claims 1 and 31.

It is further submitted that none of the remaining cited references disclose or suggest the light diode that emits considerable intensity through essentially the entire visible spectral range of claims 1 and 31. Specifically, it is submitted that Suga, Keithley, Sweatt, Mishra, Nagasaki, Reisser, Lex '434, Klenk, and Lex '412 alone or in combination do not disclose or suggest a light diode that emits considerable intensity through essentially the entire visible spectral range of claims 1 and 31.

Therefore, it is respectfully submitted that the light diode that emits considerable intensity through essentially the entire visible spectral range of claims 1 and 31 is not disclosed or suggested by the cited references alone or in combination.

Moreover, Applicants respectfully traverse these rejections on the ground that the primary cited references of Jung, McNeil, Alsenz are non-analogous art to the claims of the present application.

"In order to rely on a reference as a basis for rejection of an Applicant's invention, the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436,

230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); and Wang Laboratories Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993). See also MPEP 2141.01(a).

It is submitted that Office Action has failed to establish that the primary cited references, Jung, McNeil, and Alsenz, are in the field of Applicant's endeavor or reasonably pertinent to the particular problem with which the inventor was concerned.

The present application is directed to compact portable measuring devices for automobile finishes. See Page 2, lines 1 through 40.

Jung is directed to a moveable measurement system for the optical characteristics of teeth. McNeil is directed to a stationary system for analysis of microelectronic and optoelectronic semiconductor materials. Alsenz is directed to a stationary method and apparatus for detecting and controlling the formation of ice or frost on an evaporator coil.

Accordingly, it is respectfully submitted that Office Action has failed to establish that the movable dental tool of Jung, the stationary semiconductor system of McNeil, and the stationary frost detection system of Alsenz are in the field of Applicant's endeavor or reasonably pertinent to the particular

problem with which the inventor was concerned, namely compact portable measuring devices for automobile finishes.

For at least the reasons set forth above, claims 1 and 31 are believed to be in condition for allowance. Reconsideration and withdrawal of the rejection to claims 1 and 31 is therefore respectfully requested.

Claims 2-30 and 32-38 are also believed to be in condition for allowance since they depend from the aforementioned claim 1. Reconsideration and withdrawal of the rejections to claims 2-30 and 32-38 are therefore also respectfully requested.

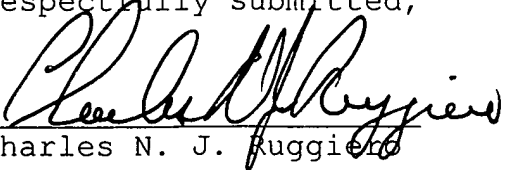
In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance. Such action is most earnestly solicited.

In the alternative, it is believed that the instant amendment places the present application in better condition for appeal. Accordingly, entry and consideration of the instant amendment is respectfully requested.

If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call Applicants' attorney at the telephone number below.

Respectfully submitted,

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